

pany the sum of \$11,602,014.00 unpaid income tax for the Year of Assessment 1973 and the sum of \$580,100.70 as penalty for non-payment. The Comptroller then applied on March 11, 1978 for summary judgment. On March 13, 1978 the defendant company moved the High Court for an order that the action be stayed and to restrain the Comptroller from taking any further step in the action until further order of the court.

The Motion for stay of proceedings was dismissed by Chua, J. on May 16, 1978. On May 26, 1978 the Comptroller's application for summary judgment came before the Registrar who gave liberty to the Comptroller to sign final judgment against the defendant company for the total sum of \$12,182,114.70 as claimed in the action and refused the defendant company's application to stay execution on the judgment pending the determination of the appeal against the decision of Chua, J. and/or the determination of the appeal now pending before the Income Tax Board of Review. The defendant company appealed against the decision of the Registrar and I dismissed the appeal. I now proceed to give my reasons.

It was never in dispute that by virtue of section 86 of the Income Tax Act (hereinafter referred to as "the Act") the tax raised became payable within one month after service of the Notice of Assessment, notwithstanding any objection or appeal against the assessment on which the tax is levied. By virtue of section 90 of the Act, tax and any penalty under the Act may be sued for by the Comptroller by way of a specially endorsed Writ of Summons and in such a suit the production of a certificate signed by the Comptroller giving the amount of the tax due by the defendant shall be sufficient evidence of the amount due and sufficient authority for the court to give judgment for the said amount.

It is by now settled law that the mere fact that a person assessed to tax, who has failed to pay the amount of the tax due on the Notice of Assessment, disputes the liability to tax or the amount due is not sufficient ground entitling him to have leave to defend an action brought by the Comptroller to recover payment of the amount due on the Notice of Assessment.

With regard to the question of the refusal by the Registrar to stay execution on the Order 14 judgment the argument that there are merits in the appeal against the Comptroller's assessment is

A not in my judgment a special circumstance which renders it inexpedient to enforce the judgment. I also declined to exercise the court's discretion to grant a stay because on the facts disclosed in the affidavits before the court the liquidators were aware that the defendant company might be assessed to tax and yet chose to distribute the company's cash assets in spite of the clear provisions of section 59 of the Act.

Order accordingly.

Solicitors: *Godwin & Co.*

TEO HONG CHOO v. CHIN KIANG INDUSTRIES PTE. LTD.

[O. C. J. (Rajah J.) September 7, 1983]
[Singapore – Originating Summons No. 322 of 1983]

E *Land Law – Sale and Purchase of land – Option exercised – Unsatisfactory answers to Legal Requisitions – Purchaser may annul sale and claim refund of 10% deposit.*

F *Conveyancing – Sale and purchase of land – Option exercised and 10% deposit paid – Unsatisfactory answers to Legal Requisitions – Purchaser may annul sale and claim refund of 10% deposit – Singapore Law Society's Conditions of Sale, 1981.*

G The plaintiff/purchaser in this case exercised an Option to purchase No. 1214 Upper Serangoon Road for \$59,000.00. A sum of \$20,000 was paid to the defendants/vendors for granting the option and \$39,000 being the balance of the 10% of the purchase price to the vendors solicitors as stakeholders. The sale was subject to the Singapore Law Society's Conditions of Sale 1981 subject to "special conditions herein contained". Clause 5 of the Option provided that "in the event of any of the answers to such requisitions being unsatisfactory, the purchaser may annul the sale in which event the deposit paid shall be refunded to the Purchaser without any recourse".

H On January 8, 1983 a Legal Requisition was sent to the Development Control Division by the purchaser's solicitors. On February 4, 1983 the answers to the said Legal Requisition were received. On March 23, 1983, a letter written to the purchaser's solicitors by the Public Works Department stated "that the road widening lines indicated on the Interpretation Plan is applicable when the site comes up for redevelopment or when the widening of Upper Serangoon takes effect". In these circumstances the purchaser claimed that the answers to Legal Requisition 5(a) and (b) read with the letter of March 23, 1983 were unsatisfactory within the meaning of Clause 5 of the Option thus enabling her to annul the sale and have refunded to her the deposit of \$59,000 paid to the vendors under the Contract.

Held, allowing the purchaser's claim: (1) clause 3 of the option to purchase has the effect of overriding clause 15 of the Singapore Law Society's Conditions of Sale 1981 and making clause 5 of the Option to Purchase a necessary condition of the Contract.

(2) as the answers to the Legal Requisition 5(a) and (b) were unsatisfactory from the point of view of the purchaser, the purchaser may, at her option, annul the sale and have her 10% deposit refunded to her.

[Editorial Note: The defendants have appealed to the Court of Appeal in C.A. No. 44 of 1983 against the above decision.]

Case referred to:

- (1) *Tatlien Hardware Pte. Ltd. v. Tan & Lie & Anor.*
[1982] 1 M.L.J. 9.

ORIGINATING SUMMONS.

S. Rai for the plaintiff.

Gan Hiang Chye (Wong Juan Swee (Miss) with him) for the defendants.

Cur. Adv. Vult.

Rajah J.: This is an application under section 4 of the Conveyancing and Law of Property Act (Cap. 268, 1970 Edition) by the Plaintiff who seeks the determination of the court on the following questions and claims the following relief, namely:—

1. A Declaration that the reply received from the Development Control Branch to the Plaintiff's requisition read together with the Interpretation Plan is unsatisfactory as contemplated by Clause 5 of the Option to Purchase, dated the 3rd day of January 1983, given by the Defendants to the Plaintiff.
2. A Declaration that the Plaintiff is entitled to rescind the Contract.
3. That the Defendants may be ordered to repay to the Plaintiff the sum of \$59,000/- being the amount of deposit under the Contract.

The Defendants in consideration of the sum of \$20,000/- paid by the Plaintiff to them granted to the Plaintiff an Option dated January 3, 1983, to purchase No. 1214 Upper Serangoon Road (area approximately 455 square metres) for the sum of \$590,000/-. The said Option which contained all the terms and conditions under which the purchase was to be effected was to expire at 4.00 pm. on the January 6, 1983, that is within 3 days of the granting of the Option. The said Option to Purchase is set out in *Appendix "A"*. The Plaintiff exercised the said Option under Clause 2 thereof before the expiry date by signing the "Acceptance Copy" and paying \$39,000/- being the balance of the 10% of the purchase

A price. The \$39,000/- was to be held by the Vendors' solicitors as stakeholders.

B Clause 3 of the said Option provides that, "the sale is subject to the Singapore Law Society's Conditions of Sale 1981 so far as the same are applicable to a sale by private treaty and are not varied by or inconsistent with the special conditions herein contained".

Clause 15 of the said Law Society's Condition of Sale 1981 provides that:—

C "15. The property is sold subject to any Government road, back lane or other improvement scheme whatever affecting the same, whether mentioned in the particulars or not, and the Purchaser shall be deemed to have full knowledge of the nature and effect thereof, and shall make no objection or requisition in respect thereof."

D In effect this clause is the same as Clause 15 of the (revised) Singapore Conditions of Sale, which have since been replaced by the said Law Society's Conditions of Sale on January 1, 1981.

Clause 5 of the said Option provides that:—

E "5. The sale is subject to the Purchaser receiving satisfactory answers to all requisitions (whether on title or to the City Authorities) and in the event of any of the answers to such requisitions being unsatisfactory, the Purchaser may annul the Sale in which event the deposit paid shall be refunded to the Purchaser without any recourse."

F On January 8, 1983 a Legal Requisition in the form commonly used by solicitors in Singapore was sent to the Development Control Division by the Purchaser's solicitors. On the February 4, 1983 the answers to the said Legal Requisition were received. The Legal Requisition and the answers thereto are set out in *Appendix 'B'*.

G Arising out of the answers to Legal Requisition 5(a) and (b) and the Interpretation Plan affecting the said property the Plaintiff's solicitors wrote on the March 11, 1983 to the Development Control Branch, Development and Building Control Division as follows:—

"Deputy Director,
Development Control Branch
Development & Building Control Division,
Singapore.

I Dear Sir,

Re: No. 1214 Upper Serangoon Road
Lot 1277 Mukim XXII

We refer to the above matter and forward herewith a photocopy of your reply to our legal requisition together with a copy of the interpretation plan for your attention.

You will note from the above documents that a substantial portion of the land is affected by road widening. We shall be obliged if you will let us know whether the affected area has been earmarked and will be acquired by the government for road purposes, irrespective whether or not the owner of the land known as Lot 1277 Mukim XXII submits any plans for redevelopment of the land."

On the March 23, 1983 the Public Works Department wrote to the Plaintiff's solicitors as follows:—

"M/s Goh & Hin
Advocates & Solicitors
5E Asia Insurance Building
Finlayson Green
Singapore 0104

Dear Sirs,

I refer to your minute dated March 11, 1983 to Development & Building Control Division and forwarded to this office.

2. Please note that the road widening lines indicated on the Interpretation Plan is applicable when the site comes up for redevelopment or when the widening of Upper Serangoon Road takes effect."

In these circumstances the Plaintiff claims that the answers to Legal Requisition 5(a) and (b) read with the said letter of March 23, 1983 are unsatisfactory within the meaning of Clause 5 of the said Option thus enabling her to annul the sale and have refunded to her the deposit of \$59,000/- paid to the Defendants under the Contract.

It is not in dispute that the property is affected by a regular line of street under section 32 of the Local Government Integration Act (Cap. 210 of the 1970 Edition) to the extent of about one-third of the total area of the property and that the regular line of street runs through the building now standing on the property namely, 1214 Upper Serangoon Road.

The Defendants, in refuting the Plaintiff's claim, call to their aid the case of *Tatlien Hardware Pte. Ltd. v. Tan & Lie & Anor.*⁽¹⁾ (the 1980 Case). In the 1980 Case a similar application by the purchaser under a similar clause in the option to purchase ("The sale will be subject to the Purchaser receiving satisfactory answers to all requisitions (whether on title or to the City Authorities) and in the event of any of the answers to such requisitions being unsatisfactory, the Purchaser may annul the sale in which event the deposit shall be refunded to the Purchaser.") was dismissed. In the 1980 Case, according to the Master Plan the property in question was not affected by a road widening line. Also under the Master Plan the existing back lane abutting the property was to be

A converted into a rear service road. The road widening line as shown on the Interpretation Plan relating to the property in the 1980 Case was inserted therein by the Road Section on their own initiative and did not form part of the Master Plan. In effect in the 1980 Case the property therein was (1) not affected by any road widening line and (2) not affected by the said rear service road. In these circumstances it could not possibly have been said that in the 1980 Case the answers to the requisitions to City Authorities were unsatisfactory.

C In the instant case the position is a whole lot different, for under the Master Plan one-third of 1214 Upper Serangoon Road is affected by a road widening line. The question therefore arises whether in all the circumstances of the instant case the answers to the Legal Requisition 5(a) and (b) are unsatisfactory and whether, on a reading of the whole of the Contract, it was the intention of the parties thereto that, in the event of answers to the Legal Requisition being unsatisfactory, the Purchaser could at her option annul the sale and have her deposit refunded to her.

E To arrive at the answer to this question it is pertinent to examine the conveyancing practice followed by lawyers in Singapore before Singapore was afflicted by a hectic property boom where vendors made purchasers to enter into "instant contracts". Before the property boom no careful conveyancing solicitor would advise his purchaser client to sign a contract for sale and purchase of land or pay the 10% deposit money before he had before him all the answers to the Legal Requisition to the City Authorities. But as Vendors were insistent on instant contracts conveyancers devised the said clause 5, in effect a procedural device, to enable intending purchasers to sign these "instant contracts" and yet retain in their hands the right to opt out of the contract should the answers to the Legal Requisition to City Authorities prove to be unsatisfactory in that the property was affected by any Government road, back lane or other improvement scheme. It will be here noted that Clause 3 of the option to Purchase has the effect of overriding Clause 15 of the Singapore Law Society's Conditions of Sale and making Clause 5 of the Option to Purchase a necessary condition of the Contract. So that with the use of the said clause 5 in these instant contracts the bargain between the parties was that the intending purchaser would pay the usual 10% deposit on the exercise of the option retaining however to himself the option either to complete the purchase or to annul the contract and have his deposit refunded to him in

the event of any of the answers to such Legal Requisition being unsatisfactory.

In my view the contract now before me is one such "instant contract". As the answers to the Legal Requisition 5(a) and (b) are unsatisfactory the purchaser may, at her option, either annul the contract and have her 10% deposit refunded to her or complete the purchase. The question of what is satisfactory or not (in the event of both the parties not seeing eye to eye) is a matter for the courts to pronounce upon under section 4 of the Conveyancing and Law of Property Act (Cap. 268, 1970 Edition). I hold that on the facts of this case the answers to the Legal Requisition 5(a) and (b) are unsatisfactory from the point of view of the Purchaser and that she may therefore annul the sale and have her 10% deposit refunded to her.

Claim allowed.

Solicitors: *Goh & Hin; Wong Juan Swee.*

Appendix A

OPTION TO PURCHASE

M/s Chin Kiang Industries Pte. Ltd.
211, Beach Road
Singapore 0718

To: Madam Teo Hong Choo
7 Richard's Avenue
Singapore 1954

(I.C. No. 0200390/B)

Re: *No. 1214 Upper Serangoon Road*
Lot 1277 Mukim XXII

In consideration of the sum of Dollars Twenty Thousand (\$20,000) only being option money paid by you to us (the receipt whereof we hereby acknowledge), we, Messrs. Chin Kiang Industries Pte. Ltd. hereby grant you the option to purchase the above property at the price of Dollars Five Hundred and Ninety Thousand (\$590,000) only subject to the following terms and conditions:—

1. This option shall expire at 4.00 pm on January 6, 1983 and if not exercised before this time and date shall be null and void and the option money paid hereunder shall be forfeited to us and neither party shall have any claim against the other.

2. This option may be exercised at any time before the expiry date by signing on the attachment marked "Acceptance Copy" and delivering same duly signed and witnessed to our solicitors Messrs. Wong Juan Swee of # 05-403 Chinese Chamber of Commerce and Industry Building, Hill Street, Singapore 0617 together with the sum of Dollars Thirty-Nine Thousand (\$39,000) only being the 10% of the purchase price less the option money already paid which said \$39,000 is to be held by the Vendors' solicitors as stakeholders.

A 3. The Sale is subject to the Singapore Law Society's Conditions of Sale 1981 so far as the same are applicable to a sale by private treaty and are not varied by or inconsistent with the special conditions herein contained.

4. The title must be in order and free from encumbrances.

B 5. The Sale is subject to the Purchaser receiving satisfactory answers to all requisitions (whether on title or to the City Authorities) and in the event of any of the answers to such requisitions being unsatisfactory, the Purchaser may annul the Sale in which event the deposit paid shall be refunded to the Purchaser without any recourse.

C 6. Vacant possession shall be given on completion.

7. In the event of Government acquisition before the date of completion, the 10% deposit shall be refunded to the Purchaser.

8. Time shall be the essence of this Contract.

D 9. The purchase shall be complete at the office of our solicitors Messrs. Wong Juan Swee, #05-403 Chinese Chamber of Commerce & Industry Building, Hill Street, Singapore, on or before the March 5, 1983.

10. If the Purchaser fails to complete by the March 5, 1983 then —

E (a) Without prejudice to any other rights or remedies available to them at law or in equity, the Vendors shall forfeit and retain for their own benefit the deposit paid by the Purchaser; and shall

F (b) Resell the property whether by auction or by private treaty without previously tendering a conveyance to the Purchaser; and

G (c) If on any such re-sale contracted within one year from the date fixed for completion the Vendors incur a loss, the Purchaser shall pay to the Vendors as liquidated damages the amount of such loss, which shall include all costs and expenses reasonably incurred in any such re-sale or any attempted re-sale, subject to the Vendors giving credit for any deposit and any money paid on account of the purchase price, but any surplus money shall be retained by the Vendors.

(d) The Purchaser shall forthwith return all title deeds and documents in her possession belonging to the Vendors and at her own expense procure the cancellation of any relating to the contract in any register.

H We do hereby affix our signatures as owners of the above described property.

Dated this 3rd day of January 1983.

I Signatures of Owners:

Sg.
Managing Director
Chin Kiang Industries (Pte.) Ltd.,

Witness:

Sgd.

Appendix B

Form DC 9 (DO) - 5
(To be submitted in duplicate)

LEGAL REQUISITION

DEPUTY DIRECTOR
DEVELOPMENT CONTROL BRANCH
DEVELOPMENT AND BUILDING CONTROL DIVISION
PUBLIC WORKS DEPARTMENT
5 Maxwell Road
5th Storey National Development Building
Singapore 0106

LR No. 16541

Our Ref :
GOH & HIN
No. 2, Finlayson Green, # 07-05
Singapore 0104.

Dear Sir,

Please supply us the following information with regard to the property known as 1214 Upper Serangoon Rd. Lot No/s 1277 *TS/MK XXII. We enclose herewith in *cheque/cash a sum at Five dollars (\$5/-) being the fee payable.

Yours faithfully.

* Delete accordingly.

Date 8.1.83

Sgd.

	Yes	No	Remarks
1. Is the property affected by any approved road proposal?		No	
2. Is the property affected by any approved backlane proposal?		No	
3. Is the property affected by any approved drainage proposal?		No	
4. Is the property affected by any Government Gazette Notification?		No	
5. a) Is there any planning decision made on proposals to develop the site? If yes, state last proposal.	Yes		Proposed Additions & Alterations To the Existing 2-Storey Detached Dwelling House.
b) Is the proposal approved? If yes, state expiry date; if no, state grounds of refusal.		No	Refused on 24-4-81 on Grounds That the Subject Site is Affected by Road Improvement.
c) If the proposal is deferred, state date of deferment.			
6. MASTER PLAN	Zoning Rural Centre & Settlement/Major Traffic Route Plot Ratio Density: Exist p/h Perm p/h Max p/h		

Note: a) The above information is supplied on the basis of data available at the time of enquiry and is given without prejudice to any changes which may take place subsequently.

b) Information on whether the site is affected by a public scheme or compulsory acquisition is confidential and cannot be disclosed unless the acquisition has already been gazetted or a planning decision has been made on a proposal to develop the site. Whether the site is affected by a public scheme will only be made known when a planning application, including outline application, is submitted for the development of the site.

FOR OFFICIAL USE

Search Fees: Lot No. 1277 \$ 5.00
 Lot No. \$
 Contiguous Lot No. \$

Receipt No. 1870 for \$5/-

TOTAL

\$

Date 13 Jan 1983

Sgd.
Liew Fook Yan
for DEPUTY DIRECTOR
DEVELOPMENT AND BUILDING
CONTROL DIVISION